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West Virginia Board of Medicine Quarterly Newsletter

INSIDE THIS ISSUE

LICENSURE RENEWALS

On Friday, May 14, 2004, licensure renewal applications will be mailed certified to all medical doctors whose last names begin with the letters A through L. Renewal applications will be mailed to the address of record on file at the Board offices. The address of record is the address designated by each physician as his or her preferred mailing address. It is the responsibility of the licensee to keep this office apprised of any address change. In the event of a change of address, the licensee must notify the Board of the change, in writing. (See change of address form on page 5.)

If a licensee does not receive a renewal application, it is his or her responsibility to inform the Board and to request a duplicate. Please contact the Board's Renewal Coordinator at (304) 558-2921, Ext. 218, or fax your written request for a duplicate application to (304)558-2084. A duplicate copy of the renewal application will be mailed to the licensee. Illegible and incomplete applications, as well as those received without the fee, will be returned. The Board will be unable to finalize the processing of any application that is not complete. Completion of the renewal application is the responsibility of the licensee.

Every application is computer-generated to include personalized information previously reported by the physician. However, each physician will need to review this information to ensure that it remains accurate. Each physician MUST provide a telephone number. The Board anticipates that this method of renewal will reduce the time necessary for the physician to complete the application.

LEGISLATIVE UPDATE

Com. Sub. for H.B. 4377 passed and has been signed into law.

In addition to the previous exemptions from paying the $1000 assessment given in 2003, the law exempts the following persons from paying the $1000 assessment made July 1, 2003: physicians who are in an inactive status, a physician who voluntarily surrenders his or her medical license, or a physician who practices less than forty hours per year providing medical genetic services to patients in this State. If after being in an inactive status a physician elects to resume an active license and the physician has never paid the assessment, then as a condition of receiving an active license, the physician must pay the assessment.

A physician who fails to pay the assessment on or before the thirtieth day of June, two thousand four, or when the license is due for renewal, whichever is earlier, and has received written notice of the assessment and option to elect inactive status, at least thirty days before the licensure renewal date or by the thirtieth day of May, two thousand four, is subject to a civil penalty in the amount of two hundred fifty dollars payable to the Board of Medicine. Furthermore, the Board of Medicine must immediately suspend the license to practice medicine of any physician who received notice and failed to pay the special assessment by the first day of July, two thousand four. Any license to practice medicine suspended shall remain suspended until both the special assessment and the civil penalty are paid in full. The entire proceeds of the civil penalty collected will go to the physicians' mutual insurance company. The Board of Medicine must promptly pay over to the company all amounts collected to be used as policyholder surplus for the company.

Com. Sub. for S.B. 399 passed and the Governor signed it. This bill will permit physicians applying for licensure to allow the materials submitted to the Board to come directly from the Federation Credentialing Verification Service to the Board offices.

Com. Sub. for H.B. 4291 passed and the Governor signed it. The new law provides that effective July 1, 2005, the requirements for two hours of continuing education coursework in the subject of end-of-life care including pain management during each continuing education reporting period will become a one-time requirement.

The Governor signed into law **H.B. 4484**. The new law permits the Board of Medicine to issue a limited license to practice medicine without examination to an individual appointed to a West Virginia medical school faculty who holds a valid license to practice medicine from another country the Board of Medicine determines has substantially equivalent requirements for licensure as those of other jurisdictions.

West Virginia Board of Medicine
Board Members

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Moorefield

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Point Pleasant

Kenneth Dean Wright, P.A.-C.
Huntington

Board Member Profile

Reverend Richard Bowyer

First appointed by Governor Jay Rockefeller to the Board of Medicine in 1981, Reverend Richard Bowyer served as a member of the Board of Medicine for thirteen years, and for several years was Chairman of the Board's Complaint Committee. In 1998, Reverend Bowyer was appointed again to the Board of Medicine, this time by Governor Cecil Underwood, then again by Governor Bob Wise in 2003, and he serves at present as a member of the Complaint Committee and the Executive/Management Committee. Reverend Bowyer is one of the consumer members on the Board of Medicine.

Reverend Bowyer is a native of Huntington, West Virginia, where he graduated from Huntington High School. After graduating from Marshall University with Honors in Philosophy in 1957, he obtained his Masters of Divinity and Masters of Theology from Duke University in North Carolina. He has additional graduate studies at West Virginia University and the University of Edinburgh, Scotland. Reverend Bowyer has served as Pastor of Prichard, Shiloh, and Bellamy Chapel United Methodist Churches in Wayne County, West Liberty Federated and Short Creek United Methodist Churches in Ohio County, and Trinity United Methodist Church, Fairmont. He has been the Campus Minister for the Wesley Foundation at Fairmont State College for forty-two years.

In addition to serving in various District, Jurisdictional, and National positions for the United Methodist Church, Reverend Bowyer has been active as a community leader and agency board member. He has served as a member of the Board of Fairmont General Hospital, and as a consumer member of the panel studying lower back pain of the United States Public Health Service Agency for Health Care Policy and Research. Currently, he serves on the boards of the Monongahelia Valley Association of Health Centers, Inc., Valley Health Care Systems, North Central West Virginia OIC, and the West Virginia Lawyer Disciplinary Board.

Ext #	Staff of the West Virginia Board of Medicine (304) 558-2921	
227	**Ronald D. Walton, M.A.**	Executive Director
214	**Deborah Lewis Rodecker, J.D.**	Counsel
212	**M. Ellen Briggs**	Administrative Assistant to the Executive Director
222	**Leslie A. Higginbotham**	Paralegal and Investigator
216	**Eric L. Holstein**	Information Systems Coordinator
210	**Charlotte A. Jewell**	Receptionist/Physician Assistant Coordinator
221	**Crystal Lowe**	Licensure Analyst
224	**Sheree Melin**	Complaints Coordinator
211	**Janie Pote**	Administrative Assistant to Legal Department
220	**Deb Scott**	Fiscal Officer

BOARD ACTIONS

January 2004—March 2004

DALTON, WILLIAM CARLOS, M.D. – Ashland, KY (02/11/04) WV License No. 20164
Board Conclusion: Relating to failing to fulfill a legal duty.
Board Action: PUBLICLY REPRIMANDED for his breach of the Agreement entered into in 1998 with the Vice Chancellor for Health Services on behalf of the University System of West Virginia Board of Trustees (now the Higher Education Policy Commission).

FEATHERS, SCOTT JAMES, D.P.M. – Parkersburg, WV (01/12/04) WV License No. 181
Board Conclusion: Relating to failure to keep records in an accurate and timely fashion.
Board Action: License SUSPENDED, effective January 1, 2004, for a period of three (3) years with said SUSPENSION being immediately STAYED, subject to Dr. Feathers' compliance with terms.

HIRSCHBERG, STANLEY M., M.D. – Winchester, VA (01/20/04) WV License No. 17609
Board Conclusion: Unprofessional, unethical conduct, and having a license disciplined in another jurisdiction.
Board Action: Dr. Hirschberg shall certify to the Board, in writing, that he has read the West Virginia Medical Practice Act and Rules of the Board and will ensure his compliance with the same. He shall maintain a course of conduct in his practice of medicine commensurate with the requirements of the Virginia Board of Medicine.

JONES, MILES JAMES, M.D. – Lees Summit, MO (01/12/04) WV License No. 14143
Board Conclusion: Relating to renewing a license by presenting false or fraudulent statements in an application for a license to practice medicine and surgery; unprofessional, unethical, and dishonorable conduct; having a medical license acted against in another jurisdiction; failing to practice medicine in an acceptable level of care, skill, and treatment; and unqualified to practice medicine in the State of West Virginia.
Board Action: License REVOKED effective January 16, 2004. Dr. Jones is assessed the costs of the proceedings.

MERKIN, BRUCE JEFFREY, M.D. – Huntington, WV (02/03/04) WV License No. 14492
Board Conclusion: The inability to practice medicine and surgery with reasonable skill and safety due to. . .abuse of drugs.
Board Action: License REINSTATED effective February 1, 2004, under accommodations, conditions, restrictions, and limitations.

NICOL, ANNE FRANCIS, M.D. – Woonsocket, RI (02/23/04) WV License No. 19866
Board Conclusion: Relating to having a license to practice medicine acted upon by another State, and the failure to comply with an Order of the Board.
Board Action: Dr. Nicol's license stands SUSPENDED effective February 23, 2004, and shall remain suspended until such time as it is documented to the Board that the Rhode Island Board of Medical Licensure and Discipline has restored her license in whole or in part, and until Dr. Nicol and the West Virginia Board of Medicine enter into a new Consent Order, at the wish of either party, as appropriate.

RICE, JOHN F., P.A.-C. – Kingwood, WV (03/17/04) WV License No. 678
Board Conclusion: Alleging failure to comply with provisions of West Virginia Code §30-3-1, *et seq.* and unprofessional conduct.
Board Action: By CONSENT ORDER entered July 28, 2003, Mr. Rice's physician assistant license was placed in a PROBATIONARY status for a two (2) year period effective upon his reinstatement as a practicing physician assistant. By AMENDED CONSENT ORDER dated March 17, 2004, Mr. Rice's license was reinstated effective March 17, 2004, in a PROBATIONARY status for a two (2) year period.

SPALT, HARRY ALFRED, M.D. – Martinsburg, WV (01/20/04) WV License No. 14504
Board Conclusion: Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity.
Board Action: License placed in an INACTIVE status effective January 9, 2004.

TURNER, FRANK LENOUS, D.P.M. – Warrenton, VA (3/8/04) WV License No. 296
Board Conclusion: Relating to deceptive, untrue, and fraudulent charges; engaging in unprofessional, unethical, dishonorable conduct, which has the further effect of bringing the podiatric profession into disrepute; and unqualified to practice podiatry in the State of West Virginia.
Board Action: License REVOKED effective March 12, 2004. Dr. Turner is required to pay the costs and expenses of the proceedings.

LICENSE DENIAL

SIMMONS, TIMOTHY KEITH, M.D. – Charleston, WV (01/15/04) WV License No. 15923
Board Conclusion: Unqualified to practice medicine and surgery in the State of West Virginia due to unprofessional conduct.
Board Action: Application for reinstatement of license to practice medicine and surgery in the State of West Virginia is DENIED.

BOARD EMPLOYEES

Mr. Eric Holstein has joined the staff as the Board's Information Systems Coordinator. He comes to the Board from Columbia Gas Transmission. We welcome Eric to the Board's staff.

In March, 2004, Ms. Sheree Melin was promoted into the Board's Complaints Coordinator position. Sheree has served as the Board's Verification Coordinator since March, 2003. Congratulations, Sheree.

CHANGE OF ADDRESS FORM

WV License No: _____ **Date of Change:** _____

Name of Licensee: _____

PLEASE CHECK ONLY ONE PREFERRED MAILING ADDRESS:

(The preferred mailing address is the licensee's address of record, which is public information.)

(Note that telephone numbers are not considered public information.)

( ) Principal Office or Work Location *ONLY CHECK ONE* ( ) Home Address

_____ _____

_____ _____

_____ _____

Telephone: _____ **Telephone:** _____

Signature: _____ Date: _____

Original Signature of Licensee is Required

***Mail completed form(s) to*:** **West Virginia Board of Medicine**
101 Dee Drive, Suite 103 • Charleston, WV 25311
Fax copies not accepted.
By law, you must keep this office apprised of any and all address changes.

CONTINUING EDUCATION SATISFACTORY TO THE BOARD

Pursuant to 11 CSR 6 2.2, in order to acquire continuing medical education satisfactory to the Board, a physician may:

A. Take continuing medical education designated as Category I by the american medical association or the academy of family physicians, or

B. Teach medical education courses or lecture to medical students, residents, or licensed physicians, or serve as a preceptor to medical students or residents: Provided, that a physician may not count more than twenty hours in this category toward the required fifty hours of continuing medical education.

C. Sit for and pass a certification or recertification examination of one of the american board of medical specialties member boards, and receive certification or recertification from said board: Provided, that a physician may not count more than twenty five hours in this category toward the required fifty hours of continuing medical education. Certification or recertification from any board other than one of the american board of medical specialties member boards does not qualify the recipient for any credit hours of continuing medical education.

There are no other types or categories of continuing medical education satisfactory to the Board.

(For your information, every physician enrolled in an ACGME approved postgraduate training program automatically receives fifty continuing medical education hours, AMA Category I, per year. Check with your program director.)

WEST VIRGINIA CODE §30-1-7a states:

Each person issued a license to practice medicine and surgery by the West Virginia Board of Medicine shall complete two (2) hours of continuing education coursework in the subject of end-of-life care including pain management. The two (2) hours shall be part of the total hours of continuing education required and not two (2) additional hours.

REMINDERS

ADDRESS OF A LICENSEE IS PUBLIC INFORMATION

West Virginia Code §30-3-13 requires the West Virginia Board of Medicine to provide, upon written or verbal request, an address of a medical doctor, podiatrist, or physician assistant. All information pertaining to licensed medical doctors, podiatrists, and physician assistants became available to the public by access to the Board of Medicine's Internet Website. With the release of this information, it has highlighted the need for licensees to carefully consider the address provided to the Board as the preferred address of record. Please be aware that the address the licensee indicates as his or her preferred address of record will be the address disclosed to all individuals making inquiries and will be utilized to mail all licenses, renewal applications, and other official correspondence from the West Virginia Board of Medicine. Licensees have the option to choose their home address or their principal office address as their preferred address of record. It is the responsibility of the licensee to inform the Board of the licensee's correct address and of any change of address. For the licensee's convenience, this NEWSLETTER contains a change of address form located on page 5.

AVAILABILITY OF SPECIAL VOLUNTEER MEDICAL LICENSE

The Board may issue a Special Volunteer Medical License to a retiring or retired physician without payment of fees, and civil immunity is provided for voluntary services rendered to indigent people, as long as the clinic where the physician will be providing the services has a written agreement with the physician to render the services and provided as well that the clinic maintains liability coverage of not less than one million dollars per occurrence.

These licenses are issued on an annual basis. Twenty-one (21) people in West Virginia currently hold a Special Volunteer Medical License. The application is a simple one and the Special Volunteer Medical License is free. If you are interested in obtaining more information, contact Crystal Lowe (304)558-2921, Extension 221.

BOARD'S WEB PAGE

The following additions have been made to the Board's web page at www.wvdhhr.org/wvbom:

—Board Member Profiles
—Position Statements of the Board, which include:
Resolution Concerning Conflicts of Interest
Sexual Misconduct Statement
Statement of Public Policy Re: Corporate Practice of Medicine
Statement on Pain Management
Use of Opioids for the Treatment of Chronic Non-Malignant Pain
Procedure to be Followed by Persons Desiring to Address the Board
Joint Policy Statement on Pain Management at the End of Life
Opinion Re: Acceptance of Loans of Money From a Patient

Joint Policy Statement on Pain Management at the End of Life

Rationale

The West Virginia Boards of Examiners for Registered Professional Nurses, Medicine, Osteopathy, and Pharmacy (hereinafter the Boards) recognize that:

- inadequate treatment of pain for patients at end-of-life is a serious health problem affecting thousands of patients every year;
- fear about dying in pain is the number one concern of West Virginians and all Americans facing the end of life;[1]
- principles of quality healthcare practice dictate that the people of the State of West Virginia have access to appropriate and effective pain relief; and
- the appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain at the end of life as well as reduce the morbidity associated with untreated or undertreated pain.

Insufficient pain control may result from health care professionals' lack of knowledge about pain management or an inadequate understanding of addiction. Fears of investigation or sanction by federal, state, and local regulatory agencies may also result in inadequate treatment of pain. ***Therefore, this statement has been developed to clarify the Boards' position on adequate pain control and to address misperceptions health care professionals may have, specifically as related to the use of controlled substances for patients with terminal illness, to alleviate health care professional uncertainty and to ensure better pain management.*** This statement is not intended to define complete or best practice, but rather to communicate what the Boards consider to be within the boundaries of professional practice.

It is the position of the Boards that nurses, physicians, and pharmacists (hereinafter healthcare professionals) under their respective jurisdictions shall provide adequate pain control as a part of quality practice for all patients who experience pain as a result of terminal illness. Accordingly, all health care professionals who are engaged in treating terminally ill patients are obligated to become knowledgeable about effective methods of pain assessment and treatment as well as statutory requirements for prescribing, administering, and dispensing controlled substances.

This statement applies explicitly and solely to pain management at the end of life. It creates no presumption regarding appropriate or inappropriate pain management in other circumstances.

Definitions

“Adequate pain control” means pain management that reduces a patient’s moderate or severe pain to a level of mild pain or no pain at all, as reported by the patient.

“Terminal illness” means the medical condition of a patient who is dying from an incurable, irreversible disease as diagnosed by a treating physician.

Collaboration among the Healthcare Team

Communication and collaboration among members of the healthcare team and with the patient and family are essential to achieve adequate pain control in end-of-life care. Within this interdisciplinary framework for end-of-life care, effective pain management should include at a minimum:

- thorough documentation of all aspects of the patient's assessment and care;
- a working diagnosis and therapeutic treatment plan including pharmacologic and non-pharmacologic interventions;
- regular and documented evaluation of response to the interventions and, as appropriate, revisions to the treatment plan;
- evidence of communication among care providers;
- education of the patient and family; and,
- a clear understanding by the patient, the family and healthcare team of the treatment goals.

Management of Pain

The management of pain should be based upon current knowledge and research and may include the use of both pharmacologic and non-pharmacologic modalities. Pain should be assessed and treated promptly and the quantity and frequency of pain medication doses should be adjusted according to the intensity and duration of the pain. Health care professionals should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

The Boards are obligated under the laws of the State of West Virginia to protect the public health and safety. The Boards recognize that inappropriate prescribing, administering, and dispensing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Health care professionals should be diligent in preventing the diversion of drugs for illegitimate purposes. While not in any way minimizing the severity of this problem, the Boards recognize that governmental policies to prevent the misuse of controlled substances should not interfere with their appropriate use for the legitimate medical purpose of providing effective relief of pain at the end of life.

Health care professionals should not fear disciplinary action from the Boards for prescribing, administering, or dispensing controlled substances, including opioid analgesics, for a legitimate medical purpose and in the usual course of professional practice. All such prescribing must be established with clear documentation of unrelieved pain and in compliance with applicable state or federal law.

Physicians

The West Virginia Boards of Medicine and Osteopathy judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and frequency of prescribing. To facilitate communication between health care professionals, physicians should write on the prescription for a controlled substance for a terminally ill patient the diagnosis "terminal illness." The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and spiritual dimensions. The West Virginia Management of Intractable Pain Act sets forth the conditions under which physicians may prescribe opioids without fear of discipline. This act states "that in a case of intractable pain involving a dying patient, the physician discharges his or her professional obligation to relieve the dying patient's intractable pain and promote the dignity and autonomy of the dying patient, even though the dosage exceeds the average dosage of a pain-relieving controlled substance" (West Virginia Code §30-3A-1 *et seq*). This entire act is attached to this statement. Because, by law, West Virginia physicians have a professional and ethical obligation to control the pain of dying patients, the West Virginia Board of Medicine regards inadequate control of pain as a possible basis for professional discipline.[2] The West Virginia Board of Osteopathy acknowledges and accepts that osteopathic physicians have the professional and ethical obligation to control the pain of dying patients.

Nurses

The nurse is often the healthcare professional most involved in the on-going pain assessment, implementation of the prescribed pain management plan, evaluation of the patient's response to pain medications, and adjustment of the amount of medication administered based on patient status. To accomplish adequate pain control, the physician's prescription must provide dosage ranges and frequency parameters within which the nurse may titrate medication to achieve adequate pain control. Consistent with the scope of professional nursing practice (Title 19, Series 10), which includes prime consideration of comfort and safety for all patients, the registered professional nurse is accountable for implementing the pain management plan utilizing his or her knowledge and documented assessment of the patient's needs. The nurse has the authority to adjust the amount of medication administered within the dosage and frequency ranges stipulated by the treating physician and according to established protocols of the healthcare institution or agency. However, the nurse does not have the authority to change the medical pain management plan. When adequate pain control is not being achieved under the currently prescribed treatment plan, the nurse is responsible for reporting such findings to the treating physician and documenting this communication. The West Virginia Management of Intractable Pain Act sets forth the conditions under which nurses may administer opioids without fear of discipline.

Pharmacists

With regard to pharmacy practice, West Virginia has no quantity restrictions on dispensing controlled substances including those in Schedule II. This fact is significant when utilizing the federal rule and state law that allow the partial filling of Schedule II prescriptions for up to 60 days for patients who are terminally ill or in a long-term care facility. In these situations it would minimize expenses and unnecessary waste of drugs if the physician would note on the prescription that the patient is terminally ill and specify

partial filling may be appropriate. The pharmacist may then dispense smaller quantities of the prescription to meet the patient's needs up to the total quantity authorized. Government-approved labeling for dosage level and frequency can be useful as guidance for patient care. Health professionals may, on occasion, determine that higher levels are justified in specific cases. Federal and state rules also allow the facsimile transmittal of an original prescription for Schedule II drugs for hospice patients. As an exception to the general rule that prescriptions for Schedule II drugs must be in writing and signed by the physician, in an emergency, a pharmacist may dispense a Schedule II pain-relieving controlled substance upon an oral prescription, provided that the quantity dispensed is limited to the amount adequate to treat the patient during the emergency, and a written prescription is supplied to the pharmacy within 7 days following the oral prescription. Pharmacy rules also allow the emergency refilling of prescriptions in Schedules III, IV, and V. The West Virginia Management of Intractable Pain Act sets forth the conditions under which pharmacists may dispense opioids without fear of discipline.

Approved by:
WV Board of Examiners for Registered Professional Nurses—March 2, 2001
WV Board of Medicine—March 12, 2001
WV Board of Osteopathy—January 24, 2001
WV Board of Pharmacy—February 12, 2001

[1] West Virginia Initiative to Improve End-of-Life Care. A Report of the Values of West Virginians and Health Care Professionals' Knowledge and Attitudes. January 2000, p. 3; Steinhauser, et al. Factors considered important at the end of life by patients, families, physicians, and other care providers. JAMA 2000;284:2476-2482.

[2] American Medical Association Code of Medical Ethics. Opinions 2.20, 2.21, and 2.211

West Virginia Management of Intractable Pain Act

§30-3A-1. Definitions

For the purposes of this article, the words or terms defined in this section have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

(1) An "accepted guideline" is a care or practice guideline for pain management developed by a nationally recognized clinical or professional association, or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. An accepted guideline also includes policy or position statements relating to pain management issued by any West Virginia Board included in chapter thirty of the West Virginia Code with jurisdiction over various health care practitioners. Guidelines established primarily for purposes of coverage, payment or reimbursement do not qualify as accepted practice or care guidelines when offered to limit treatment options otherwise covered by the provisions of this article.

(2) "Board" or "licensing board" means the West Virginia Board of Medicine, the West Virginia Board of Osteopathy, the West Virginia Board of Registered Nurses or the West Virginia Board of Pharmacy.

(3) "Intractable pain" means a state of pain having a cause that cannot be removed. Intractable pain exists if an effective relief or cure of the cause of the pain: (1) is not possible, or (2) has not been found after reasonable efforts. Intractable pain may be temporary or chronic.

(4) "Nurse" means a registered nurse licensed in the state of West Virginia pursuant to the provisions of article seven [§ 30-7-1 et seq.] of this chapter.

(5) "Pain-relieving controlled substance" includes but is not limited to an opioid or other drug classified as a schedule II controlled substance and recognized as effective for pain relief, and excludes any drug that has no accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision, including, but not limited to, any drug classified as a schedule I controlled substance.

(6) "Pharmacist" means a registered pharmacist licensed in the state of West Virginia pursuant to the provisions of article five [§ 30-5-1 et seq.] of this chapter.

(7) "Physician" means a physician licensed in the state of West Virginia pursuant to the provisions of article three or article fourteen [§ 30-3-1 et seq. or 30-14-1 et seq.] of this chapter. (1998, c.230)

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of intractable pain.

(a) A physician shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for prescribing, administering or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling intractable pain when:

(1) In a case of intractable pain involving a dying patient, in practicing in accordance with an accepted guideline as defined in section one of this article, the physician discharges his or her professional obligation to relieve the dying patient's intractable pain and promote the dignity and autonomy of the dying patient, even though the dosage exceeds the average dosage of a pain-relieving controlled substance; or

(2) In the case of intractable pain involving a patient who is not dying, the physician discharges his or her professional obligation to relieve the patient's intractable pain, even though the dosage exceeds the average dosage of a pain-relieving controlled substance, if the physician can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(b) A registered nurse shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control intractable pain, if administered in accordance with the orders of a licensed physician.

(c) A registered pharmacist shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control intractable pain, if dispensed in accordance with the orders of a licensed physician.

(d) For purposes of this section, the term "disciplinary sanctions" includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

(e) The provisions of this section shall apply to the treatment of all patients for intractable pain, regardless of the patient's prior or current chemical dependency or addiction. The board may develop and, issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.

§30-3A-3. Acts subject to discipline or prosecution.

(a) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a physician for:

(1) Failing to maintain complete, accurate, and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient, and the treatment plan for the patient;

(2) Writing a false or fictitious prescription for a controlled substance scheduled in article two [§60A-2-201 et seq.], chapter sixty-a of this code; or

(3) Prescribing, administering, or dispensing a controlled substance in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, et seq. or chapter sixty-a of this code; or

(4) Diverting controlled substances prescribed for a patient to the physician's own personal use.

(b) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a nurse or pharmacist for:

(1) Administering or dispensing a controlled substance in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, et seq. or chapter sixty-a of this code; or

(2) Diverting controlled substances prescribed for a patient to the nurse's or pharmacist's own personal use. (1998, c.230)

§30-3A-4. Construction of article.

This article may not be construed to legalize, condone, authorize or approve mercy killing or assisted suicide. (1998, c. 230)

WEST VIRGINIA BOARD OF MEDICINE
2004 MEETING

May 10
July 12
September 13
November 8

WV Board of Medicine

101 Dee Drive, Suite 103
Charleston, WV 25311

Phone: 304-558-2921
Fax: 304-558-2084

www.wvdhhr.org/wvbom
Our website is under construction.
Watch for updates and changes.

PRESORTED STANDARD
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